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EXHIBIT 5  
DATE 4/5/11  
Brenda Lindley  
Andrée Larose  
Brian J. Miller

April 5, 2011

Hon. Senator Terry Murphy  
Chairman of Senate Judiciary Committee

Dear Chairman Murphy and Members of the Committee:

Our firm was asked by Planned Parenthood of Montana to provide an analysis as to the whether the language of HB 574 meets the single vote standards that apply to constitutional initiatives. Based our analysis of this bill from a constitutional perspective, we have concluded that HB 574 is inherently unconstitutional and we recommend that HB 574 not be passed out of committee or adopted by the Legislature as a whole. If this bill were to pass, it would certainly not survive judicial scrutiny by any court of law, and would cost the taxpayers precious resources in defending this unconstitutional measure during a time when our State can least afford it.

Our analysis begins with a long established legal principle: "the [Montana] state constitution is a limitation upon the power of the legislature and not a grant of power to that body." *State v Aronson* (1957) 132 Mont. 120, 127, 314 P. 2d 849, 852. Thus, HB 574 is not permissible if does not follow constitutional requirements in regard to amending the constitution. HB 574, if passed by the Montana legislature, would become a constitutional initiative placed on the ballot for vote in the 2012 election. This legislation is governed by Article XIV, Section 8 of the Montana Constitution, which provides for the submission of legislatively-enacted constitutional referendums directly to the voters for approval.

Because HB574 seeks to amend the Montana Constitution, it is also governed by Article XIV, Section 11 of the Montana Constitution. This is known as the "single vote requirement" for constitutional amendments to the Montana Constitution. Article XIV, Section 11 requires, as a matter of constitutional law, a separate vote for each proposed constitutional amendment. See *Marshall v. State*, 1999 MT 33, ¶ 23. The single vote requirement has been adopted by the people of Montana in the Montana Constitution, and is an important constitutional protection for the people of Montana, as it prohibits the amendment of multiple sections of the Montana Constitution without the consent of the people. See *Marshall*, ¶ 19.

Based on the plain language of the bill, it is clear that HB 574, at a bare minimum, amends the Montana Constitution at least three times, if not more.

First, HB574 would amend Article II twice (thereby requiring two votes) by adding a new section 36 and by amending Article II, Section 10, the right of individual privacy. Under the Montana Constitution, the Right to Privacy expressly includes "a woman's right to the right to seek and to obtain a specific lawful medical procedure, a pre-viability abortion, from a health care provider of her choice." *Armstrong v. State*, 1999 MT 261, ¶ 75, 296 Mont. 361. HB 574 would be a restriction on the constitutional right to privacy of all Montanans, and would be an express amendment of Article II, Section 10.

Second, HB 574 would add a new constitutional restriction on the Legislature's power of appropriation. Article V, Section 11 of the Montana Constitution sets forth the constitutional powers of the Legislature to appropriate money from the public fisc. Specifically, Article V, Section 11(5) prohibits the Legislature from appropriations for religious, charitable, industrial, educational, or benevolent purposes to any private individual, private association, or private corporation not under the control of the State. HB 574 would add a new, constitutionally based restriction on the Legislature's power of appropriation, by prohibiting it from spending public funds on abortion. Thus, HB 574 would amend Article V, Section 11, as well.

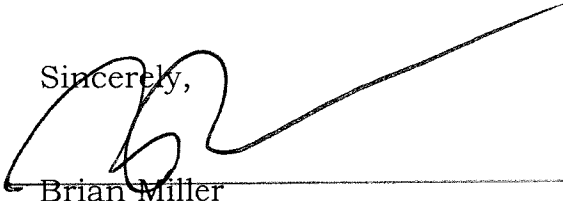
In addition to these three amendments to the Montana Constitution—which are facially apparent from the plain language of HB 574—this bill also likely amends, but presents no vote on, the associated rights under Article II, Section 3 [inalienable rights]; Article II, Section 4 [individual dignity], and Article II, Section 17 [due process], all as discussed in *Armstrong*.

Additionally, HB 574 raises some serious due process concerns on a broader, constitutional level as well. Essentially, HB 574 restricts and limits the constitutional right of privacy of all Montanans, yet the bill makes no mention of that fact. It could very well be unconstitutional to deprive or limit the constitutional rights of the people through a proposed constitutional amendment without giving the voters express notice of this fact. If the voters are giving up their constitutional right to privacy, due process requires that they should be expressly informed as such.

With the above in mind, HB 574, in our judgment, presents multiple amendments to the Montana constitution in the unconstitutional form of a single vote. This sort of sledgehammer approach to something as important as Montana's constitution is wisely prohibited. The constitution protects the rights of individuals from erosion by the acts of a temporal majority, something we should all profoundly appreciate given the struggles we see now for individual human dignity in other countries throughout the world.

Mr. Chairman and Members of the Senate Judiciary Committee, I hope that his analysis, brief as it is, proves helpful to you in your deliberations on this matter.

Sincerely,

A handwritten signature in black ink, appearing to be 'Brian Miller', written over a horizontal line.

Brian Miller

Jonathon Motl